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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Conservatorship of the Person and Estate of
SUE TSUGI TAKAYAMA.

B211226

(Los Angeles County
Super. Ct. No. BP100107)

ROBERT TAKAYAMA, as Conservator,
etc.,

Petitioner and Respondent,

v.

KAREN J. SEGEL,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Mitchell L. Beckloff, Judge. Affirmed.

Karen J. Segel, in pro. per., for Objector and Appellant.

Hinojosa & Wallet, Lynard C. Hinojosa, Katerina F. Smith, Katerina F. Perreault
and Kelly L. Hinojosa for Petitioner and Respondent.

In this conservatorship case, the conservator filed a petition against Karen J. Segel, an attorney who had previously represented the conservatee in several matters. The petition alleged that the conservatee lacked the capacity to retain Segel, and consequently, the estate was entitled to a return of the attorney fees Segel had been paid. The petition contained two causes of action, one for conversion and the other for violation of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.).

Eventually, Segel filed a special motion to strike, contending that the petition was a “strategic lawsuit against public participation” (SLAPP) (Code Civ. Proc., § 425.16; all undesignated section references are to that code). The conservator opposed the motion, arguing it was untimely and without merit.

An anti-SLAPP motion must be filed within 60 days after service of the petition unless the trial court extends the deadline. (§ 425.16, subd. (f).) Here, the petition was served on August 15, 2007. The 60-day period expired on October 15, 2007. The motion was filed on August 20, 2008 — 310 days late.

Segel argued that the 60-day period should be extended because she did not learn until June 2008 that one of the conservator’s witnesses exhibited memory problems during his deposition. Segel also learned that another of the conservator’s witnesses was under criminal investigation for extortion.

By order dated September 25, 2008, the trial court denied the motion because it was untimely and, in the alternative, without merit. Segel appealed.

As the trial court cogently explained in its order: “[S]ection 425.16 requires that any special motion to strike . . . be filed within 60 days ‘of the service of the complaint or, in the court’s discretion, at any later time upon terms it deems proper.’ ([§] 425.16, subd. (f).) As [Ms. Segel’s] motion to strike was filed well outside of the 60 day period following service of the petition in this matter, whether the special motion to strike is heard is within the court’s discretion.

“There is authority that would permit this court to deny the special motion to strike based on the moving party’s failure to seek leave of the court in advance of filing

the Special Motion to Strike after the 60 day time limitation in the statute has passed. (*Kunysz v. Sandler* (2007) 146 Cal.App.4th 1540, 1543.) . . . [T]he court herein addresses the timeliness issue and whether the special motion to strike should be heard at this time.

“As noted in *Olsen v. Harbison* (2005) 134 Cal.App.4th 278, 287: ‘There are two potential purposes of the 60-day limitation. One is to require presentation and resolution of the anti-SLAPP claim at the outset of the litigation before the parties have undertaken the expenses of litigation that begin to accrue after the pleading stage of the lawsuit. The other is to avoid tactical manipulation of the stays that attend anti-SLAPP proceedings. The “prejudice” to the opponent pertinent to these purposes is that which attends having to suffer such expenses or be subjected to such a stay.’

“The Elder Abuse Petition was filed on August 1, 2007. Ms. Segel filed her objections to the petition on September 10, 2007. On February 25, 2008, Ms. Segel filed a motion for summary judgment that was heard by the court on May 21 and June 9, 2008. The court denied the summary judgment motion on June 9, 2008. The Elder Abuse Petition was calendared for trial on July 7, 2008. The parties stipulated to a continuance of the trial. The trial was thereafter scheduled to commence on October 1, 2008.

“On August 20, 2008, Ms. Segel filed her Special Motion to Strike. The motion was filed after the discovery cut off date and after the matter was initially calendared for trial.

“Ms. Segel explained her delay in filing her Special Motion to Strike was based on facts discovered through the June 13, 2008 deposition of witness, Richard Sharpe, and through the investigation of alleged felonious conduct by another witness. Despite the arguments made at the hearing by Ms. Segel and her former counsel, Lisa Fisher, the court cannot find that in relation to her Special Motion to Strike there was anything significant in the facts discovered that furnished (for the first time) grounds for filing a special motion to strike.

“As noted by the court during the hearing, Mr. Sharpe’s deposition was taken on June 13, 2008. Ms. Segel’s counsel attended the deposition. Thus, Ms. Segel had the newly discovered facts on June 13. Nonetheless, the Special Motion to Strike was not filed until more than 60 days later.

“Further, the alleged felonious conduct of a particular witness appears to have no bearing on a Special Motion to Strike. As noted by the Conservator’s attorney during the hearing, those issues figure into that witness’ credibility should that witness be called at trial.

“Given all that had transpired in the case by the time the special Motion to Strike was filed, the court cannot find that good cause exists to allow Ms. Segel to pursue the Special Motion to Strike at this late date. Neither of the competing considerations for the timeliness of such a motion is met. The motion does not expeditiously dispose of a matter before the expense of litigation has been incurred. Indeed, the [Elder Abuse Petition] was initially to be [tried] six weeks prior to the special Motion to Strike being filed. Additionally, [if a special] motion [to strike is] brought and heard shortly before a scheduled continued trial date[,] [it results in] delay of th[e] trial because of the immediately available appeal.

“Accordingly, the court finds that the Special Motion to Strike is not timely and is denied on those grounds.”

For the above reasons, we conclude the trial court did not abuse its discretion in declining to hear the untimely motion. (See *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 782–787; *Olsen v. Harbison*, *supra*, 134 Cal.App.4th at pp. 283–287.)

Because we conclude that Segel’s anti-SLAPP motion was untimely, we do not consider the merits of her substantive arguments or the merits of the conservator’s claims against her. (Cf. *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80–81.) Any request for appellate attorney fees (§ 425.16, subd. (c)) should be presented to the trial court on remand (Cal. Rules of Court, rule 3.1702(a), (c)).

DISPOSITION

The order is affirmed.

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MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.